

### **REMARKS**

The office action of August 31, 2009 has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested.

Claims 1-36 are pending in this application. Claims 1-10 were previously elected. Claims 11-35 have been withdrawn. Claim 36 has been added. No new matter has been entered. Claim 36 relates to claim 9 in non-multiple dependent form.

Claims 1-10 have been amended. No new matter has been entered.

#### ***Allowable Subject Matter***

Preliminarily, applicant appreciates the indication that the application contains allowable subject matter. Specifically, claims 2-4 and 6-8 have been objected to for being dependent upon a rejected base claim, but would be allowable if amended to incorporate all the features of their ultimate base claim and any intervening claims.

#### ***Double Patenting***

Claims 1-10 stand rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-50 of co-pending U.S. Publication No. 2006/0280050.

Applicant submits a terminal disclaimer to overcome the provisional double patenting rejection.

#### ***Rejection of Claims 1, 5, 9, and 10 Under 35 U.S.C. § 102 Over Heylen***

Claims 1, 5, 9 and 10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2002/0159591 to Heylen, et al. Applicant traverses this rejection.

Claim 1 recites:

... including a table of contents ... and the program area  
including a subchannel; wherein,  
...

- b. the subchannel indicates a payload start position different from said indicated start position; and
- c. said track includes a recoverable payload at the payload start position.

Heylen discloses a system in which ATIME errors are introduced “during some of the time of each track” see lines 3 to 5 of paragraph 70. That is, errors are introduced after the start position of a track which is indicated by the P subchannel (lines 9 and 10 of paragraph 65) and there is simply no indication whatsoever that the P subchannel points to a start position which is in any way different from that indicated by the table of contents. Indeed, this would be counter-intuitive: as errors are introduced, and hence encountered after, the start point indicated by the P subchannel, it would provide no benefit whatsoever to have the P subchannel indicate a start position distinct from that indicated by the table of contents. This would be entirely unwarranted. Indeed, if anything, this would undermine the central theme of Heylen, which is to scatter Q subchannel control errors throughout a track, specifically so that a CD-ROM drive encountering those errors will be unable to continue playing a track, unlike a simple audio player (see paragraphs 75 and 76). Accordingly, claim 1 is not disclosed in Heylen.

Claim 5 includes similar recitations and is allowable as well.

Dependent claims 9 and 10 are allowable at least as being dependent on allowable claim 5.

***Rejection of Claims 1, 5, 9, and 10 Under 35 U.S.C. § 102 Over Babowicz***

Claims 1, 5, 9 and 10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2005/0212441 to Babowicz. Applicant traverses this rejection.

Claim 1 recites:

... including a table of contents ... and the program area  
including a subchannel; wherein,  
...

- b. the subchannel indicates a payload start position different from said indicated start position; and
- c. said track includes a recoverable payload at the payload start position.

In Babowicz, errors are introduced throughout all frames of a subject track (see last sentence, paragraph 58) and hence are encountered after the start of the track, which according to the reasoning of the Examiner, would be indicated by the P subchannel. Having this P subchannel point to a start position distinct from that indicated by the table of contents is not disclosed in Babowicz. At best, it would undermine the central teaching of Babowicz, which is to have a player encounter errors after the start position indicated by the P subchannel.

Accordingly, claim 1 is not disclosed in Babowicz.

Claim 5 includes similar recitations and is allowable as well.

Dependent claims 9 and 10 are allowable at least as being dependent on allowable claim 5.

***Rejection of Claims 1, 5, 9, and 10 Under 35 U.S.C. § 102 Over Shavit***

Claims 1, 5, 9 and 10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,952,479 to Shavit, et al. Applicant traverses this rejection.

Claim 1 recites:

- ... including a table of contents ... and the program area including a subchannel; wherein,
- ...
- b. the subchannel indicates a payload start position different from said indicated start position; and
- c. said track includes a recoverable payload at the payload start position.

Shavit discloses inverting the synchronization pattern S0-S1. Little detail on the manner of this inversion is given, but the clear indication is that this is carried out throughout the track, as lines 45 to 50 of column 15 disclose the contrasting manners in which a simple audio player and a computer CD drive would operate upon encountering the synchronization errors. Hence, the clear implication is that these errors are contained throughout the track to prevent the computer CD drive from being able to read the disc. Certainly, there is no explicit indication, nor hint, that a subchannel of the recorded session of Shavit would point to a start position which is in any way different from any start position indicated by the table of contents. Again, Shavit simply relies upon an audio player ignoring encountered synchronization pattern errors, whereas computer CD drives are described as typically failing when encountering such errors (see lines 47 to 50 of column 15).

Accordingly, claim 1 is not disclosed in Shavit.

Claim 5 includes similar recitations and is allowable as well.

Dependent claims 9 and 10 are allowable at least as being dependent on allowable claim 5.

Applicant submits the application is in condition for allowance.

Respectfully submitted,  
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